

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division**

ROBERT UPDEGROVE <i>et al.</i> ,)	
)	
Plaintiffs,)	
)	
v.)	Civil Action No. 1:20-cv-01141-CMH-JFA
)	
MARK R. HERRING <i>et al.</i> ,)	
)	
Defendants.)	

**JOINT MOTION TO SET COMBINED BRIEFING SCHEDULE
AND CONSOLIDATED HEARING**

Plaintiffs Robert Updegrove and Loudoun Multi-Images LLC d/b/a Bob Updegrove Photography (Plaintiffs) and Defendants Attorney General Mark R. Herring and Senior Assistant Attorney General R. Thomas Payne, II (Defendants) jointly move this Court for an order setting a combined briefing schedule to govern Defendants' response to Plaintiffs' complaint and motion for preliminary injunction (Dkt. 2). The parties agree that this motion can be resolved without the need for a hearing. In support of their motion, the parties state as follows:

1. The law challenged in Plaintiffs' complaint went into effect on July 1, 2020. Compl. ¶ 135.
2. Plaintiffs filed this suit on September 28, 2020. See Dkt. 1. Plaintiffs also filed a motion for preliminary injunction that same day. See Dkt. 2.
3. Defendants accepted service on October 6, 2020.
4. Under this Court's Local Civil Rules, Defendants' deadline to respond to the motion for preliminary injunction is October 20, 2020. Under Federal Rule of Civil Procedure 12, Defendants' deadline to respond to the complaint is October 27, 2020.

5. Defendants anticipate filing a motion to dismiss the complaint in its entirety. Many of the arguments Defendants intend to make in their motion to dismiss are threshold arguments that Defendants also intend to offer in opposition to a preliminary injunction. In the interest of judicial economy and efficiency, the parties have agreed to a combined joint briefing schedule so that these overlapping arguments may be raised and addressed by the parties and the Court at the same time.

6. Defendants further request a brief extension of the default deadlines so that counsel has sufficient time to investigate the allegations in the complaint, review the voluminous materials submitted in support of the motion for a preliminary injunction, and prepare a response accordingly.

7. Good cause also exists for the requested extensions in light of the ongoing COVID-19 pandemic and the press of work and scheduling conflicts in counsel's other matters. Counsel for Defendants are currently working remotely in response to the pandemic, and remote work and the ongoing public health emergency present unique challenges in terms of technology, collaboration, and managing both personal and professional obligations in the same physical space. In addition, in the coming weeks, counsel for Defendants are scheduled to present argument in three cases before the United States Court of Appeals for the Fourth Circuit, two cases before the Supreme Court of Virginia, and an expedited trial in the Circuit Court for the City of Richmond. Counsel for Plaintiffs are also scheduled to present argument in the coming months before the United States Court of Appeals for the Ninth Circuit, in addition to providing counsel in arguments before the Sixth and Tenth Circuits, and preparing a brief before the United States Supreme Court.

8. Plaintiffs further request a brief extension of the default deadlines because

counsel for Plaintiffs have already scheduled travel for personal reasons during Thanksgiving and Christmas.

9. This Court has “considerable discretion in managing its civil docket in the best interests of judicial economy and fairness to the parties, including the discretion to set and enlarge time limitations for responsive pleadings.” *In re Parker*, 1987 WL 38506, at *1 (4th Cir. 1987).

10. Pursuant to that discretion, the parties respectfully request that the Court set a combined briefing schedule and consolidated hearing on Plaintiffs’ motion for preliminary injunction (Dkt. 2) and Defendants’ forthcoming motion to dismiss as follows:

- **Monday, November 16, 2020:** Defendants’ combined opposition to motion for preliminary injunction and motion to dismiss
- **Monday, December 14, 2020:** Plaintiffs’ combined reply in support of preliminary injunction and opposition to motion to dismiss
- **Wednesday, December 23, 2020:** Defendants’ reply in support of motion to dismiss
- **Friday, January 15, 2021:** Consolidated hearing on Plaintiffs’ motion for preliminary injunction and Defendants’ motion to dismiss

11. This briefing schedule would not alter the date of any event or deadline already fixed by Court order in this action.

12. This is the first extension any party has requested with respect to Plaintiffs’ motion for preliminary injunction or Defendants’ response to the complaint. Counsel for the parties certify that this motion is made in good faith and not for purposes of delay.

WHEREFORE, the parties respectfully request that the Court grant their motion to set the above-referenced briefing schedule for Plaintiffs’ motion for a preliminary injunction (Dkt. 2) and Defendants’ forthcoming motion to dismiss, and consolidate the hearings so that both motions may be heard at the same time.

Dated: October 8, 2020

Respectfully Submitted:

/s/ Jessica Merry Samuels

Jessica Merry Samuels (VSB No. 89537)
Assistant Solicitor General
Martine E. Cicconi (VA Bar No. 94542)
Deputy Solicitor General
Office of the Attorney General
202 North Ninth Street
Richmond, Virginia 23219
(804) 786-6835 – Telephone
(804) 371-0200 – Facsimile
solicitorgeneral@oag.state.va.us

*Attorneys for Defendants Mark R. Herring
and R. Thomas Payne, II*

/s/ C. Douglas Welty (by permission)

C. Douglas Welty (VSB No. 29480)
C. Douglas Welty PLC
2111 Wilson Boulevard
Suite 800
Arlington, Virginia 22201
(703) 276-0114 – Telephone
(844) 456-7800 – Facsimile
cdwelty@weltyblair.com

Jonathan A. Scruggs
Arizona Bar No. 030505
Alliance Defending Freedom
15100 N. 90th Street
Scottsdale, AZ 85260
(480) 444-0020
(480) 444-0028 (facsimile)
jscruggs@ADFlegal.org

David A. Cortman
Georgia Bar No. 188810
Alliance Defending Freedom
1000 Hurricane Shoals Rd. NE
Suite D-1100
Lawrenceville, GA 30043
(770) 339-0774
(770) 339-6744 (facsimile)
dcortman@ADFlegal.org

Johannes S. Widmalm-Delphonse
Minnesota Bar No. 396303
Alliance Defending Freedom
20116 Ashbrook Place, Suite 258
Ashburn, VA 20147
(571) 707-4655
(571) 707-4656 (facsimile)
jwidmalmdelphonse@ADFlegal.org

*Attorneys for Plaintiffs Robert Updegrove
and Loudoun Multi-Images LLC d/b/a
Bob Updegrove Photography*

CERTIFICATE OF SERVICE

I hereby certify that on October 8, 2020, I will electronically file the foregoing with the Clerk of Court using the CM/ECF system, which will then send a notification of such filing (NEF) to all counsel who have appeared, including:

C. Douglas Welty PLC
2111 Wilson Boulevard
Suite 800
Arlington, VA 22201
(703) 276-0114
cdwelty@weltyblair.com

By: /s/ Jessica Merry Samuels
Jessica Merry Samuels
Assistant Solicitor General
Office of the Attorney General
202 North Ninth Street
Richmond, Virginia 23219
(804) 786-6835 – Telephone
(804) 371-0200 – Facsimile
solicitorgeneral@oag.state.va.us